

1 RUSS, AUGUST & KABAT
Benjamin T. Wang (SBN 228712)
2 bwang@raklaw.com
3 James S. Tsuei (SBN 285530)
jtsuei@raklaw.com
4 12424 Wilshire Boulevard, 12th Floor
5 Los Angeles, California 90025
6 Telephone: (310) 826-7474
Facsimile: (310) 826-6991

7
8 MORRIS, MANNING & MARTIN, L.L.P.
Lawrence H. Kunin, Esq. (*pro hac vice*)
9 1600 Atlanta Financial Center
10 3343 Peachtree Road, N.E.
Atlanta, Georgia 30326
11 Telephone: (404) 233-7000
12 Facsimile: (404) 365-9532

13 *Attorneys for Defendant*
14 BITPAY, INC.

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18
19 OX LABS, INC.,
20

21 *Plaintiff,*

22 vs.

23 BITPAY, INC. and Does 1-10,
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25 *Defendants.*
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27
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Case No. 2:18-cv-05934-MWF-KS

**DEFENDANT BITPAY, INC.'S
OBJECTIONS TO
PLAINTIFF OX LABS, INC.'S
PROPOSED JURY
INSTRUCTIONS**

Pursuant to the Court's Order re: Jury Trial (D.I. 22), Defendant BitPay, Inc. provides the following objections to Plaintiff Ox Labs, Inc.'s Proposed Jury Instructions.

Ox Labs' Proposed Instruction No.	BitPay's Objection(s)
27 ("CONVERSION— ESSENTIAL FACTUAL ELEMENTS")	BitPay objects to Ox Labs' Proposed Instruction No. 27 as stated. The elements are not accurately stated in a neutral form. The instruction also misstates the nature of the error, i.e., BitPay never possessed the 200 erroneously credited bitcoin. The instruction also omits the fact that Ox Labs admitted that the alleged conversion was the result of its own error. There is also no evidence of any interference with Ox Labs' rights. The statement that BitPay refused to return the bitcoins falsely implies that BitPay had the erroneously credited bitcoins to return.
28 ("DAMAGES FOR CONVERSION (CIV. CODE § 3336)")	BitPay objects to Proposed Instruction No. 28 as stated. California Civil Code § 3336 is not accurately cited and nor is the standard for when the alternate to value-at-time-of-conversion is available.
29 ("UNJUST ENRICHMENT – QUASI-CONTRACT - MISTAKEN RECEIPT")	BitPay objects to Proposed Instruction No. 29, as it does not accurately state Ox Labs' pled claim or available remedy. The instruction also misstates the nature of the error, i.e., BitPay never possessed the 200 erroneously credited bitcoin. The instruction also omits the fact that Ox Labs admitted that the alleged conversion was the result of its own error. Finally, the instruction omits undisputed evidence showing that Ox Labs cannot prove that it would still be benefiting from the bitcoin had the error not occurred. The instruction also omits that the remedy for unjust enrichment does not override the remedy for conversion.
30 ("SPECIFIC RECOVERY")	BitPay objects to Proposed Instruction No. 30 as it misstates the standard and availability of an alternate remedy to value at the time of Ox Labs' own error.
31 ("STATUTE OF LIMITATIONS – AFFIRMATIVE	BitPay objects to Proposed Instruction No. 31 because it misstates the issue. The court

Ox Labs' Proposed Instruction No.	BitPay's Objection(s)
DEFENSE")	will decide whether the two- or three- year statute of limitations applies. If the three- year statute applies, BitPay does not assert that the statute of limitations expires. If the two-year statute of limitations applies, the question will be whether Ox Labs is excused from its own error in not discovering the error earlier than July 6, 2015.

Respectfully submitted,

DATED: November 4, 2019

RUSS, AUGUST & KABAT
Benjamin T. Wang
James S. Tsuei

By: /s/ Benjamin T. Wang

Attorney for Defendant
BitPay, Inc.

RUSS, AUGUST & KABAT

CERTIFICATE OF SERVICE

I hereby certify pursuant to the Federal Rules of Civil Procedure and LR 5-3 and 5-4 that the foregoing **DEFENDANT BITPAY, INC.'S OBJECTIONS TO PLAINTIFF OX LABS, INC.'S PROPOSED JURY INSTRUCTIONS** was served upon the attorney(s) of record for each party through the ECF system as identified on the Notice of Electronic Filing on November 4, 2019.

By: /s/ Benjamin T. Wang
Benjamin T. Wang

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